STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES ANTHONY WARD,

Defendant-Appellant.

UNPUBLISHED
April 15, 2003

No. 232241
Wayne Circuit Court
LC No. 99-000682

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of 50 or more but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii). He was sentenced to a term of ten to twenty years' imprisonment. He appeals as of right. We affirm.

After observing a suspected drug transaction, the police chased a suspect who was carrying a bag of narcotics into a house located at 6712 Seminole in Detroit. Once inside the house, the officers observed a large amount of cocaine in plain view on a table. Defendant and two other men were sitting at the table. The original suspect escaped through an upstairs window. According to one of the police officers, defendant ran to the bathroom and flushed a quantity of powder down the toilet. Defendant left a visible powder trail of cocaine as he ran. Defendant dropped the remaining material, 88.71 grams of cocaine, on the floor and was placed under arrest. The police subsequently obtained a search warrant and conducted a thorough search of the house. During their search, the police recovered a large quantity of cocaine and heroin, along with drug paraphernalia, scales, packaging materials, firearms and cash.

Defendant initially argues on appeal that the trial court erred in denying his motion to suppress the evidence because he lacked standing to contest the search. We disagree. "While the trial court's findings are reviewed for clear error, the ruling on [a] motion to suppress is reviewed de novo for all mixed questions of fact and law, and for all pure questions of law." *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999). Both the state and federal constitutions prohibit unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *Powell, supra* at 560. To establish standing, the burden is on the defendant to show that, "under the totality of the circumstances, he has a subjective expectation of privacy in the object of the search or seizure and the expectation of privacy is one that society is prepared to recognize as reasonable." *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999).

Tracy Martin testified at the suppression hearing that she attempted to purchase the home at 6712 Seminole from the city in 1994. However, she stated that the city would not give her title to the property until she made the necessary repairs to bring it up to code. Ms. Martin apparently moved out of the house because of numerous break-ins. She stated that she told defendant he could stay in the house in exchange for making the repairs. Ms. Martin admitted, however, that she did not possess either a title or deed to the house at the time of the incident. Nevertheless, several neighbors claimed that they had seen defendant in the neighborhood and believed he was living at 6712 Seminole. The trial court ultimately determined that defendant lacked standing to challenge the search of the house. According to the trial court, because Ms. Martin did not have legal title to the house, which she had abandoned, she lacked the authority to give defendant possession.

Property ownership is not dispositive of a determination of standing. *People v Wagner*, 114 Mich App 541, 547; 320 NW2d 251 (1982). In this case, however, the record supports the trial court's ruling. While there was evidence that a few people believed that defendant lived at 6712 Seminole, there was no evidence that he kept clothing, food, or personal belongings at that residence. Indeed, defendant told the arresting officer that he lived at an apartment on Trumbull in Detroit, and that he was "just working on the house at 6712 Seminole." A driver's license and mail in defendant's name, containing a Trumbull address, were also recovered during the search of the Seminole house. On these facts, we are not convinced that defendant met his burden of showing an expectation of privacy in the house at 6712 Seminole. See *id.; Zahn, supra* at 446.

Moreover, any error in this regard would have been harmless. Preserved constitutional error involving the presentation of the case to the jury may be harmless if, beyond a reasonable doubt, there is no reasonable possibility that the evidence complained of contributed to the conviction. *People v Belanger*, 454 Mich 571, 576; 563 NW2d 665 (1997). There is an exception to the Fourth Amendment warrant requirement in cases involving exigent circumstances. *People v Cartwright*, 454 Mich 550, 558; 563 NW2d 208 (1997). The "police may enter a dwelling without a warrant if the officers possess probable cause to believe that a crime was recently committed on the premises, and probable cause to believe that the premises contain evidence or perpetrators of the suspected crime." *Id.* at 559 (citations omitted). In this case, there was ample evidence of exigent circumstances. Although neighbors testified that they heard police shouting, the sound of someone pounding on a door, and glass breaking, they could not see what was happening at 6712 Seminole. In fact, no one at the suppression hearing disputed the police officers' testimony that they entered the house in pursuit of a man who had been observed engaging in a suspected drug transaction and who was carrying a bag of suspected narcotics.

Further, contrary to defendant's claim, there was evidence of probable cause that the unknown man committed a crime. "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). The officers in the instant case observed a man taking part in a suspected drug transaction. When the police approached the suspect, he fled and ultimately ran into a house. An officer also observed that the suspect was carrying a bag of suspected narcotics. The bag was subsequently recovered and the substance inside was determined to be narcotics.

The police observed a large quantity of cocaine in plain view upon entering the house. Police officers may "seize, without a warrant, items in plain view if the officers are lawfully in a position from which they view the item, and if the item's incriminating character is immediately apparent." *Id.* at 101. Further, once lawfully inside the house, the police were in a position to observe defendant run to the bathroom with a bag of suspected cocaine. After securing the premises, the police obtained a search warrant. Because the police acted properly, there is no reasonable probability that any error in determining the question of defendant's standing contributed to his conviction in this matter. *Belanger, supra* at 576.

Defendant next alleges that reversal is required because he was denied his right to a speedy trial. A speedy trial claim raises constitutional issues that we review de novo. *People v Mackle,* 241 Mich App 583, 602; 617 NW2d 339 (2000). "In determining whether a defendant has been denied a speedy trial, four factors must be balanced: (1) the length of the delay, (2) the reasons for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) prejudice to the defendant." *Id.* (citations omitted).

Defendant asserts that there was a twenty-two month delay between his arrest and his trial. However, he acknowledges that eight months of the delay was attributable to his motion to suppress. A delay over eighteen months "is presumed to be prejudicial and the burden is on the prosecution to prove lack of prejudice to defendant." *People v Gilmore,* 222 Mich App 442, 460; 564 NW2d 158 (1997).

The record reflects that the prosecution did not file any motions in this case. In addition to the eight-month delay caused by defendant's motion to suppress, there were delays due to defense counsel's health problems and other motions and requests for adjournments by defendant. Defendant asserts that most of the other delays occurred because of docket congestion and problems inherent in the court system. Although delays because of overcrowded dockets "'are technically attributable to the prosecution, they are given a neutral tint and are assigned only minimal weight in determining whether a defendant was denied a speedy trial.'" *Id*., quoting *People v Wickham*, 200 Mich App 106, 111; 503 NW2d 701 (1993). The record shows that defendant failed to object to these adjournments. In *Gilmore*, *supra* at 461, this Court noted that if the defendant had objected, "another judge may have been available to accept the case and proceed to trial."

Moreover, defendant did not to assert his right to a speedy trial until October 23, 1999. This was approximately ten months after his December 30, 1998 arrest. Defendant claimed that he was prejudiced by this delay because a witness had moved out of state, another witness could not be located, and the property at 6712 Seminole had been "damaged to the point where we can't get pictures that any way reflect what it looked like in those days." However, the prosecution argued that these facts failed to establish prejudice. According to the prosecution, the building in question "burned down" by the time defendant's motion to suppress was filed, the "missing" witnesses testified at a prior hearing, and there has been no showing that their testimony was material or that defendant has made any effort to locate them. Because defendant failed to object to the adjournments of trial, was responsible for a large part of the delay, and was not prejudiced by the delay, dismissal is unwarranted. *Id*. at 459-460.

Defendant further argues that the trial court erred when it allowed irrelevant evidence to be admitted at trial. Specifically, defendant cites the testimony regarding the street value of

cocaine, as well as the evidence of drugs and weapons not connected to his charged possession of a single bag of cocaine. We disagree. A trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002). However, because defendant failed to object to the challenged evidence at trial, our review is limited to plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

We are not persuaded that the evidence was clearly irrelevant, particularly in light of defendant's theory of the case. This case involved vastly differed accounts of the events on the night of defendant's arrest and was essentially a credibility contest. Evidence of the drugs and weapons seized at the house was relevant to support the credibility of the prosecution witnesses. *People v McGuffey*, 251 Mich App 155, 162-163; 649 NW2d 801 (2002). Moreover, given the overwhelming evidence that defendant possessed cocaine, we are not convinced that any error affected his substantial rights. *Carines, supra* at 763-764. Indeed, the jury acquitted defendant of the more serious offense of possession with intent to deliver.

Defendant also suggests in passing that counsel was ineffective for failing to object to admission of the evidence. However, an issue not included in the statement of questions presented is considered unpreserved on appeal. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Nevertheless, limiting our review to the record, defendant has failed to establish that his counsel was deficient or that her failure to object detrimentally affected the result of the trial. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Defendant also opines that the trial judge improperly instructed the jury that defense counsel asked an inappropriate and misleading question during trial. The instruction referred to a question defense counsel asked a police witness concerning the fact that a codefendant "was actually found not guilty of possession of narcotics." Defendant argues that the trial court's instruction was critical of defense counsel's style, ability, integrity and professionalism. The propriety of a judge's actions is subject to review de novo. *In re Hocking*, 451 Mich 1, 5 n 8; 546 NW2d 234 (1996). "A trial court's conduct pierces the veil of judicial impartiality where its conduct or comments unduly influence the jury and thereby deprive the defendant of a fair and impartial trial." *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). After reviewing the trial judge's instruction to the jury, it is apparent to this Court that the instruction did not imply that counsel was a liar or that she was using underhanded tactics. Accordingly, we do not find that the instruction unduly influenced the jury. *Id.*

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper